

LABOUR DEPARTMENT

The 25th May, 1987

No. 9/1/87-6Lab./2900.—In pursuance of the provision of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala in respect of the dispute between the Workman and the Management of M/s General Manager, Punjab Business Supply Co. (Hindustan Wastes Processing Factory Unit), Industrial Area, Yamuna Nagar :—

IN THE COURT OF SHRI V. P. CHAUDHARY, PRESIDING OFFICER,
LABOUR COURT, AMBALA

Reference No. 181 of 1985

SMT. YASHODA, W/O SHRI DHARAM PAUL, H. NO. 12, KRISHNA COLONY, YAMUNA NAGAR AND THE MANAGEMENT OF THE MESSRS GENERAL MANAGER, PUNJAB BUSINESS SUPPLY CO. (HINDUSTAN WASTES PROCESSING FACTORY UNIT), INDUSTRIAL AREA, YAMUNA NAGAR

Present :—

Shri Madhu Sudan Saran Cowshish for workman.

Shri Subhash Bindra for respondent.

AWARD

The Hon'ble Governor of Haryana in the exercise of the powers conferred,—*vide* clause (c) of sub-section (i) of section 10 of Industrial Disputes Act, 1947 referred dispute between Smt. Yashoda and Messrs General Manager, Punjab Business Supply Co., Industrial Area, Yamunanagar to this Court. The terms of the reference are as under :—

“Whether termination of services of Smt. Yashoda is just and correct, if not, to what relief is she entitled?”

Smt. Yashoda alleged that she joined services of respondent-management in 1981 as a General Labourer at the monthly wages of Rs. 370 per month. She had been working in the respondent-management without any break up till 9th March, 1985. First of all respondent-management used to mark her presence on Kacha paper. When she protested then her presence used to be recorded on presence rolls. When she completed service of 240 days and she became eligible as well as entitled to be made permanent. Thereafter respondent terminated her services in violation of provisions of section 25(F) of the Industrial Disputes Act, 1947. Thereafter she complained to Labour Officer but her dispute could not be settled. It was referred to Government and later on the Government referred this dispute to this court. She prayed that she be reinstated with continuity in service and with full back wages.

Respondent-management contested the dispute and contended that Smt. Yashoda was employed on casual basis on daily wages. She was mostly irregular in reporting for work at the factory on the morning shift and consequently she never completed service of 240 days in any calendar year. It was also contended that she was never employed on monthly pay of Rs. 370. She was to be paid only for those days on daily wages basis for which she used to work. It was also contended that Smt. Yashoda is in fact and mid-wife, she has been attending the delivery cases and used to report on duty whenever she used to find time to come to the job of the respondent.

Smt. Yashoda filed replication through which she controverted the contentions of the respondent-management.

On the pleadings of the parties, the following issues were framed for the decision of this dispute.

Issues :

- (1) Whether termination order, dated the 9th March, 1985 regarding services of Smt. Yashoda is justified as per reference, if not, its effect ? OPM
- (2) Relief ?

I have heard Shri Madhu Sudan Saran Cowshish, Authorised Representative for workman and Shri S. Bindra for respondent-management and have perused the oral and documentary evidence placed on the file. My issuewise findings are as under :

Issue No. 1 :

In support of this issue Smt. Yashoda examined AW-1 Shri Ranjit Ram who deposed that there is union in the respondent-management of workers. Smt. Yashoda is a member of that union. He himself is also General Secretary of that union for the last 10 years. Smt. Yashoda had been working in the respondent firm for the last five years. In cross-examination he stated that at present he is an Organising Secretary of the union. He admitted this fact that he is involved in a rape case and is not in the job of the respondent-management. His rape case is under the active consideration of the Government.

Smt. Yashoda examined herself as AW-2 she stated that she had been working in the respondent-management for the last five years. Her services were terminated without issuing any notice and without making payment of any retrenchment compensation. She brought E.S.I. Card. She also stated in cross-examination that she joined services of respondent-management in 1980 and not in 1981. She never got written in her demand notice and statement of claim that she used to get Rs. 370 per month. She denied the suggestion that she never completed service of respondent-management more than 240 days in any calendar year. She also denied the suggestion that she herself started absenting from the job of the respondent-management. She further deposed that she never moved an application for recovery of bonus pertaining to the year 1985-86 nor she was paid any bonus of this year.

Respondent-management examined MW-1. Shri N. P. Sachdeva who deposed that he has brought the attendance and payment registers, as per this record, Smt. Yashoda joined service of respondent-management on 22nd December, 1982 and she remained in the job of respondent up to 8th March, 1985 as a casual daily wager. After March, 1985 she never reported on duty. He had not been seeing the workwoman working as mid-wife.

Shri Babu Ram examined as MW-2 who deposed that he has brought attendance register of the workwoman of the respondent-management. He has been marking presence of all the workers. Smt. Yashoda has been absenting from her duty since 8th March, 1985. MW-3 Shri Sarwan Kumar deposed that he has been maintaining the record of ESI. Smt. Yashoda was on roll in ESI Scheme on 22nd December, 1982. He has been submitting reports of ESI to the Government regularly and contribution of Smt. Yashoda has been sent to the Government from 22nd December, 1985 to 8th March, 1985. Thereafter no contribution of the workwoman was received. MW-4 Shri Shyam Sunder deposed that Smt. Yashoda is not registered as a mid-wife in the record of Municipality, Yamuna Nagar. However, in register of birth she has been recorded as a mid-wife against Serial No. 778.

In view of the above evidence, I am of the considered opinion that Smt. Yashoda has examined only single witness Shri Ranjit Ram in her favour, whose character is most suspicious when he admitted in his cross-examination that he is involved in rape case and that rape case is still pending and is in the active consideration of the Government. Statement of Shri Ranjit Ram is in fact most damaging to the workwoman Smt. Yashoda and is of no help to her. She has association with a person who is a man of such a character as narrated above. So statement of Shri Ranjit Ram cannot be believed and has to be discarded.

Smt. Yashoda in her cross-examination admitted that she never got mentioned in her demand notice or statement of claim that she gets Rs. 370 P. M. which shows that she had been employed on daily wages as a daily wager, in other words as a casual Labourer. Her statement that she was not issued any notice nor paid retrenchment compensation before terminating her services also goes against her because as per statement of MW-1 Shri N. P. Sachdeva it is evident that Yashoda was a casual worker. She never completed service more than 240 days in the job of respondent-management in any calendar year. From 12th December, 1982 to 21st December, 1983 she worked for 228-1/2 days, from 22nd December, 1983 to 21st December, 1984 she worked for 215-1/2 days from 22nd December, 1984 to 8th March, 1985 she worked for 49-1/2 days. And after 8th March, 1985 she has been absenting from the employment of respondent-management. MW-2 Shri Babu Ram also made similar statement that he brought the attendance register, payment register and stated that he marks the presence of the workmen of the factory. Smt. Yashoda has been absenting since 8th March, 1985. MW-3 Shri Sarwan Kumar stated that after 8th March, 1985 no contribution of Smt. Yashoda towards ESI received, so no return could be sent to the Government in her case.

MW-4 Shri Shyam Sunder Kohli deposed that in birth register of the Municipal Committee, Yamuna Nagar against Serial No. 778 name of Shmt. Yashoda has been recorded as a mid-wife which shows that she attends delivery cases.

In view of the above analysis of the evidence led by the parties, it is evident that Smt. Yashoda had been employed as a casual Labourer on daily wages as per her own admission. Attendance register, payment register brought and produced by the respondent-management in evidence by the above witnesses show that Smt. Yashoda never worked more than 240 days in any calendar year. So before dispensing with her services

there was no necessity of issuing any notice or retrenchment compensation. But it is not a case of the management that it terminated the services of the workman. In fact she is still in the service of respondent-management but since she has started absenting from 8th March, 1985 and did not report on duty. So it shows that she voluntarily abandoned her job because she is actively busy in performing duties of a mid-wife as admitted by MW-4 Shri Shyam Sunder, so it is in fact a case of abandonment of job by means of absenting from duties. So in these circumstances also the management may not like to retain her in its job, in those circumstances this issue is decided, in favour of, management against the workwoman.

Issue No. 2 :

For the fore going reasons on the basis of my issuewise findings the workwoman has failed to establish her claim of reinstatement with continuity in service and with back wages. However she is entitled to her dues because she has abandoned her job of her own. Her dues be paid to her. I pass award regarding the dispute in hand between the parties accordingly.

Dated the 5th March, 1987.

V. P. CHAUDHARY,

Presiding Officer,
Labour Court, Ambala.

Endst. No. 538, dated the 10th March, 1987.

Forwaded (Four Copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of Industrial Disputes, 1947.

V. P. CHAUDHARY,

Presiding Officer
Labour Court, Ambala.

No. 9/1/87/6 Lab./2906.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala in respect of the dispute between the Workman and the Management of M/s. Markanda Vanaspati Mills Ltd., Shahabad Markanda :—

IN THE COURT OF SHRI V.P. CHAUDHARY, PRESIDING OFFICER, LABOUR COURT
AMBALA

Reference No. 196 of 1985

SHRI HARI DUTT SHARMA C/O MARKANDA VANASPATI KARAMCHARI UNION, KILA SIKHA
WALA, SHAHABAD MARKANDA (KURUKSHETRA) AND THE MANAGEMENT OF THE
MESSRS MARKANDA VANASPATI MILLS LTD. SHAHABAD MARKANDA.

Present :—

Shri Madhu Sudan for workman.
Shri S. Kaushal for respondent.

AWARD

The Hon'ble Governor of Haryana in the exercise of its powers conferred,—vide clause (C) of sub-section (i) of section 10 of Industrial Disputes Act, 1947 referred dispute between Shri Hari Dutt Sharma and Messrs Markanda Vanaspati Mills Ltd., Shahabad Markanda to this Court. The terms of the reference are as under :

“Whether termination of services of Shri Hari Dutt Sharma, is just and correct, if not, to what relief is he entitled ?”

Workman through his statement of claim alleged that he had been in the employment of respondent-management on permanent job more than six years. He fell ill on 14th November, 1984 and recovered on 7th December, 1984. He despatched leave application which was never sanctioned by the management. When he reported on duty on 8th December, 1984 along with medical certificate, he was not allowed to resume duty. On the contrary respondent-management terminated services of the workman on 7th December, 1984 illegally, so he prayed for his reinstatement with continuity in service and with full back wages.

Respondent-management contested the dispute and contended that the workman left the job on 14th November, 1984 without getting any leave sanctioned. Thereafter his telegram was received on 19th November, 1984 from Delhi that he is ill. Workman left Shahabad for Delhi without permission without getting leave sanctioned, so the Management issued telegram as well as letter to him to report on duty and also submit fitness certificate from C.M.O. but the workman failed to submit fitness certificate, so it was presumed that the absence of the workman amounts to an abandonment of job.

Workman filed replication through which he refuted the contentions of the respondent-management and reiterated his own claim.

On the pleadings of the parties, the following issues were framed :

Issues :

- (1) Whether termination of workman in question is illegal, if so, its effect ? OPW
- (2) Whether reference is bad in the eyes of law as alleged ?
- (3) Relief?

I have heard Shri Madhu Sudan Saran for workman and Shri S. Kaushal for respondent-management and have perused the oral and documentary evidence placed on the file. My issue wise findings are as under :

Issue No. 1 :

In support of this issue workman examined himself as AW-1, he stated that he was an employee in respondent-management on permanent job. He fell ill on 14th November, 1984. He submitted leave application up to 7th December, 1984 but his leave application was not sanctioned, when he reported on duty on 8th December, 1984 along with medical fitness certificate. He was not allowed to resume duty.

Respondent-management examined Shri Pawan Kumar, Head Time Keeper as well as Shri R.C. Mehta. Both witnesses deposed that workman left Shahabad on 14th November, 1984 without permission to leave station for Delhi nor he got leave sanctioned. His leave application was received on 19th November, 1984, telegraphically which was not accompanied with medical certificate. Thereafter management issued telegram to workman to report on duty. Copy of the same is Ex-M-2 and M-3, but in spite of that, workman failed to report on duty. When he appeared on 8th December, 1984 he was asked to produce medical fitness certificate from CMO which he also failed to submit.

Shri R.C. Mehta MW-2 further deposed that since the workman left Shahabad without permission and also without getting leave sanctioned, the management presumed that workman has abandoned his job. He remained absent more than 10 days, so according to Model Standing Orders his services were dispensed with.

In view of the above evidence, I am of the considered opinion that there is an act of indiscipline on the part of workman. He left the factory premises as well as Shahabad for Delhi without seeking prior permission from the management. The workman before leaving the station did not get his leave sanctioned, he left the premises unauthorisedly and after reaching at Delhi he despatched telegram to management which was received on 19th November, 1984 after five days of his absence and he further remained absent up to 7th December, 1984 intentionally, in spite of, the fact that his leave was refused. He should have reported on duty immediately but he did not comply the orders of the management. So there is an act of indiscipline and disobedience on the part of the workman. On the basis of the same management as per Model Standing Orders which are applicable on the management struck off name of the workman from its register of employment. Orders of the management to maintain discipline in the management concern is just and correct. The workman is entitled to his dues and retrenchment compensation, if that is not paid, be paid now without any loss of time, so this issue is decided, in favour of, management against the workman.

Issue No. 2:

This issue is not pressed nor any arguments are advanced. So it is decided against the management.

Issue No. 3 :

For the foregoing reasons on the basis of my issuewise findings, I hold that order of management striking off the name of the workman from the register of employment is just and correct. Workman is not entitled to relief claimed for. So I pass award regarding the dispute between the parties accordingly.

V. P. CHAUDHARY,

Presiding Officer,
Labour Court, Ambala.

Dated, the 5th March, 1987.

Endst. No. 551, dated the 10th March, 1987.

Forwarded (four copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of Industrial Disputes Act, 1947.

V. P. CHAUDHARY,

Presiding Officer,
Labour Court, Ambala.

No. 9/1/87/6Lab./2927.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala in respect of the dispute between the workman and the Management of M/s Bermco Engineering, E-56, Industrial Area, Yamuna Nagar:—

IN THE COURT OF SHRI V.P. CHAUDHARY, PRESIDING OFFICER, LABOUR COURT, AMBALA

Reference No. 198 of 1985

SHRI SIRI RAM, WORKMAN C/O SHRI SURINDER SHARMA, INTUC OFFICE, RAILWAY ROAD, JAGADHRI AND THE MANAGEMENT OF THE MESSRS BERMCO ENGINEERING, E-56, INDUSTRIAL AREA, YAMUNA NAGAR

Present:—

Shri U. Kant for workman.

Shri S. Bindra for respondent.

AWARD

The Hon'ble Governor of Haryana in the exercise of powers conferred,—*vide* clause (C) of sub-section (i) of section 10 of Industrial Disputes Act, 1947 referred dispute between Shri Siri Ram and Messrs Bermco Engineering, Industrial Area, Yamuna Nagar to this Court. The terms of the reference are as under :

“Whether termination of services of Shri Siri Ram, workman is just and correct, if not, to what relief is he entitled ?”

Workman through his demand notice, dated 27th April, 1985 alleged that he had been coming in the employment of respondent-management for the last seven years as a Welder. He had been discharging his duty to the satisfaction of the respondent-management. But respondent-management terminated his services on 31st January, 1985 without getting conducted impartial inquiry from an impartial Inquiry Officer. Copy of domestic Inquiry report was not given to him, the allegations do not pertain to the duty hours his services were terminated. In pursuance of that controversy, on 31st January, 1985 full and final settlement was not made with him. He was not got medically examined in pursuance of allegations levelled against him. He prayed for his reinstatement with continuity in service and with full back wages.

Respondent-management contested the dispute and contended that workman joined service of respondent on 1st July, 1978. He worked up to January, 1985 at the monthly wages of Rs. 495 per month. The applicant had been issued warning on various occasions on account of his misconduct with the factory staff and co-workers. His previous confessional statement and replies were enclosed with the written statement. A charge-sheet was issued on 29th November, 1984. Reply of the workman was received which was found unsatisfactory which led to appointment of Inquiry Officer. Inquiry Officer conducted the inquiry in a most impartial manner. After providing full opportunity to cross-examine the workman to the witnesses and to lead defence evidence. In fact management had no ill-will against the workman. It was the routine work for the workman to Man-handle, misbehave, and abuse the workers as well as supervisory staff. A copy of report of domestic inquiry was supplied to him. Second show-cause notice was issued to workman which was duly replied by him. After considering the reply an opportunity of being personally heard was afforded to him. Thereafter, his services were dispensed with. It was prayed that the claim of the workman be rejected.

Workman filed replication through which he controverted the contentions of the management.

On the pleadings of the parties the following issues were framed :

Issue No. 1 :

(1) Whether termination order as alleged is unjust and illegal, if so, its effect ? OPW

Issue No. 2 :

(2) Relief ?

I have heard Shri U. Kant for workman and Shri S. Bindra for respondent-management and have perused the oral and documentary evidence placed on the file. My issue wise findings are as under :

Issue No. 1.—In support of this issue, workman Shri Siri Ram examined himself as AW-1 he stated that he had been working as a Welder for the last seven years. He received a copy of complaint which is Ex-W-1. He filed a reply which is Ex. W-2. He received a charge-sheet Ex-W-3. Reply of that charge-sheet which he furnished to the management is Ex.-W-4. Domestic inquiry was conducted against him which is Ex-W-6. He received a notice, reply of the same is Ex-W-6. He also received a second show-cause notice Ex-W-7. Reply of the same is Ex. W-8. He stated that no copy of inquiry report was given to him in spite of demand none of the factory workers deposed against him. His services were dispensed with illegally. He denied the suggestion that he took excessive liquor indulged in manhandling with his Supervisor and abused him. He also denied the suggestion that his co-workers had deposed against him. However, he made a counter allegation that he had lent a sum of Rs. 102 from Shri S. N. Sharma. He went to take payment of that money from him, due to that fact he felt annoyed and filed a wrong complaint against him to the Manager.

Respondent examined Shri T.N. Kapoor as RW-1 he deposed that he was appointed Inquiry Officer in this case to go into the charges levelled against the workman. He issued notices to the parties. Both the parties took part in the inquiry proceedings. He recorded statement of the witnesses in the presence of workman Shri Siri Ram. He afforded a full opportunity to workman Shri Siri Ram to cross-examine the witnesses who appeared against him and he also afforded a full opportunity to him to lead defence evidence. MW-2 Shri Virinder Nath stated that he is a partner in the respondent-management. Management received a complaint against the workman Shri Siri Ram on 22nd October, 1984 at 7.30 p.m. that Shri Siri Ram worker had abused Supervisor Shri S.N. Sharma and had manhandled him. So charge-sheet was issued to the workman which was replied by him. Reply of the workman was found unsatisfactory, so Shri Kapoor was appointed an Inquiry Officer who submitted his inquiry report copy of the same was given to him. Thereafter, a show-cause notice was issued to the workman who filed a reply but the reply of the workman was found most unsatisfactory. So he was dismissed from his job.

Shri U. Kant, Authorised Representative of the workman argued that in this case no copy of inquiry report was supplied to workman, in spite of demand but this contention of the Ld. Authorised Representative of the workman is incorrect because Ex. M-2/A shows that copy of inquiry report was received by Shri Siri Ram on 28th January, 1985 and this receipt bears signatures of Shri Siri Ram, workman.

Second show-cause notice was issued to the workman which is Ex. W-7. Reply of the workman is Ex. W-8 and termination order is Ex. W-10.

Shri U. Kant, Authorised Representative of the workman argued that punishment of termination of services of the workman is too harsh the respondent should have taken lenient view. He drew my attention towards AIR 1982 Supreme Court page 1552 in which it was observed that dismissal of employee for use of indiscreet language disclosing threatening posture, upheld award is liable to be set aside.

With due respect to the above judicial pronouncement I am of the considered view that the facts of the present case are not similar with the judicial pronouncement under reference. In the case under reference workman used discrete language disclosing threatening posture but in the case in hand workman Shri Siri Ram first of all came in drunken condition, during duty hours to the Supervisor abused him manhandled him and this fact has been supported by Shri S.N.Sharma, Supervisor as well as other witnesses, namely, Shri Hira Lal, Chowkidar, Ram Rikha Fitter, Baldev Singh partner as well as Ranjit Singh Plannerman, so in the case in hand the act of the workman is that he appeared before his Supervisor Shri S.N. Sharma in drunken condition, abused him as well as manhandled him. So these two acts of the workman that he appeared in drunken condition and manhandled his Supervisor Shri S.N. Sharma are beyond the acts of the case under reference. So the workman Shri Siri Ram cannot seek benefit of the judicial pronouncement under reference.

As per statements of Shri S.N. Sharma complainant Hira Lal, Chowkidar, Ram Rikhi Fitter Baldev Singh partner and Ranjit Singh Planner before the Inquiry Officer it is proved that workman Shri Siri Ram under the influence of liquor abused, manhandled his Supervisor Shri S.N. Sharma.

A minute perusal of the Inquiry file shows that workman was afforded an full opportunity to cross-examine the witnesses and was also afforded an opportunity to lead defence evidence which he availed of. So the inquiry held by the management through Shri Kapoor is proper and valid.

After the domestic inquiry copy of the report of the inquiry was handed over to workman. Second show-cause notice was issued which the workman replied. Management applied its mind to the whole matter as stated by MW-2 and thereafter it took a decision to terminate the services of the workman with the direction that the workman should collect his dues immediately on any working day. So this order of termination passed by the management is just and correct does not need any interference, so this issue is decided, in favour of management against the workman.

Issue No. 2.—For the fore going reasons on the basis of my findings on issue No. 1, I hold that the termination order is just and correct. Workman is not entitled to reinstatement as prayed for. I pass award regarding the dispute between the parties accordingly.

Dated, the 18th March, 1987.

V. P. CHAUDHARY,

Presiding Officer,
Labour Court, Ambala.

Endst. No. 603, dated, the 18th March, 1987.

Forwarded (four copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

No. 9/1/87-6Lab./2933.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala in respect of the dispute between the workman and the Management of M/s. (i) Transport Commissioner, Haryana Chandigarh, (ii) General Manager, Haryana Roadways, Yamuna Nagar:—

IN THE COURT OF SHRI V. P. CHAUDHARY, PRESIDING OFFICER, LABOUR COURT,
AMBALA

Reference No. 244 of 1985

SHRI BALBIR SINGH, S/O SHRI KUNDAN LAL, 126 LABOUR COLONY, YAMUNANAGAR
AND THE MANAGEMENT OF THE TRANSPORT COMMISSIONER,
HARYANA, CHANDIGARH, (II) GENERAL MANAGER, HARYANA ROADWAYS,
YAMUNA NAGAR.

Present :—

Shri Balbir Singh for workman.

Shri Rama Kant, A.D.A. for respondent.

AWARD

The Hon'ble Governor of Haryana in the exercise of its powers conferred,—*vide* clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947 referred dispute between Shri Balbir Singh, workman and General Manager, Haryana Roadways, Yamuna Nagar to this court. The terms of the reference are as under :

“Whether termination of services of Shri Balbir Singh, is justified and correct, if not, what relief is he entitled ?”

Workman through his demand notice alleged that he joined service of respondent-management in March, 1982 as a Helper. His services were terminated on 15th February, 1985 in violation of provisions of section 25(F) of Industrial Disputes Act, 1947. He prayed for his reinstatement with continuity in service and with full back wages.

Respondent-management contested the dispute and contended that workman was appointed on daily wages at the rates fixed by Deputy Commissioner, Ambala. Workman started absenting himself from 15th February, 1985 wilfully, unauthorisedly and never reported on duty. No order of termination was passed regarding his termination. Ultimately there is no violation of provisions of Industrial Disputes Act. It was further contended that workman is not entitled to relief claimed for.

On the pleadings of the parties the following issues were framed :

Issue No. 1 :

Whether termination of services of workman is illegal and incorrect, if so, to what relief ?

Issue No. 2 :

Relief.

I have heard Shri Balbir Singh for workman and Shri Rama Kant, A.D.A. for respondent-management and have perused the oral and documentary evidence placed on the file. My issuewise findings are as under :

Issue No. 1 :

In support of this issue Shri Balbir Singh examined himself as AW-1. He deposed that he joined service of respondent-management in March, 1982 as a Helper. He was removed from service in February, 1985 without any notice and without making payment of any retrenchment compensation. He stated that in the month of September, 1984 he was paid less when he demanded full wages he was not allowed to work. He denied the suggestion that on 15th February, 1985, he knowingly absented from his duty.

Respondent-management examined Shri Ritu, Raj Clerk who deposed that the workman was appointed on daily wages for fixed period. His term of service were renewed from time to time after 15th February, 1985 no further renewal regarding his services was given to him. In cross-examination he stated that as soon as service period of the workman was not renewed, so his services came to an end automatically. He further stated that he cannot say whether any other person has been employed in his place or not.

In view of the above evidence, I am of the considered opinion that in the written statement management has taken plea that workman started absenting himself with effect from 15th February, 1985 while in the statement of Shri Ritu Raj, Clerk it came to light that service period of workman expired on 13th February, 1985 and thereafter his service period was not renewed. This shows that the pleadings of the management are at variance with the evidence led by it. So the whole of the management has become suspicious. From the above evidence I reach at the conclusion that in fact respondent-management paid the workman at the Deputy Commissioner's rate while the workman demanded regular pay scale due to that fact the trouble arose and the workman did not report on duty for not making payment of full wages to him. Had the management would have refused to take workman on duty, in those circumstances workman must have filed some separate complaints. Workman issued demand notice on 27th February, 1985 on the basis of the same this dispute was referred to this Court.

There is no evidence on the file from the side of the workman that from 13th February, 1985 up till today he is without work. Workman has also failed to lead any such evidence that the management has employed any other person in his place. In these circumstances the workman is entitled to reinstatement on the original terms and conditions with the relief of continuity in service. However, he is not entitled to back wages, so this issue is decided, in favour of, workman against the management.

Issue No. 2 :

For the foregoing reasons on the basis of my findings on issue No. 1, I hereby ordered the management to reinstate the workman with the relief of continuity in service in his old terms and conditions of service without back wages and I pass award regarding the dispute between the parties accordingly.

Dated, the 19th March, 1987.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

Endst. No. 609, dated the 19th March, 1987.

Forwarded (four copies) to the Financial Commissioner and Secretary to Government, Haryana, and Employment Departments, Chandigarh as required under section 15 of Industrial Disputes Act, 1947.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

No. 9/1/87-6Lab/2935.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala in respect of the dispute between the workman and the Management of M/s. (i) S.T.C., Haryana Chandigarh, (ii) Haryana Roadways, Yamunanagar.

IN THE COURT OF SHRI V.P. CHAUDHARY, PRESIDING OFFICER, LABOUR
COURT, AMBALA

Referece No. 6 of 1986

[SHRI SURINDER KUMAR C/O PT. MADHU SUDAN SARAN COWSHISH, LATHMARAN
STREET, JAGADHARI AND THE MANAGEMENT OF THE MESSRS S. T. C.
HARYANA, CHANDIGARH (II) HARYANA ROADWAYS, YAMUNANAGAR

Present :—

Shri Madhu Sudan Saran Cowshish for workman.

Shri Rama Kant, A.D.A. for respondent.

AWARD

The Hon'ble Governor of Haryana in the exercise of powers conferred,---vide clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947 referred dispute between Shri Surinder Kumar, workman and Messrs S.T.C., Haryana, Chandigarh etc. to this Court. The terms of the reference are as under:

"Whether termination of services of Shri Surinder Kumar is justified and correct, if not, to what relief is he entitled?"

Workman through his demand notice, dated the 25th June, 1985 alleged that he was appointed as a Ticket Verifier on 7th January, 1980. His services were terminated on 16th June, 1985 in violation of provision of section 25(F) of Industrial Disputes Act, 1947. He prayed for his reinstatement with continuity in service and with full back wages etc.

Respondent-management appeared contested the dispute and contended that workman was appointed on 7th January, 1980 on daily wages for a specific time. Thereafter; his service tenure was renewed from time to time. Workman attended the office of respondent only upto 16th June, 1985 and thereafter from 17th June, 1985 he wilfully and unauthorisedly started absenting himself from office. He was never terminated. Moreover his absence amounts to abandonment of job on his part since duties of the workman were of urgent nature, so as soon as workman Surinder Kumar started absenting himself from his duty. so another person was recruited in his place.

Workman filed replication through which he controverted the allegations of the respondent-management and contended that in fact he had been reporting on duty but the management did not allow him to resume duty. Thereafter, he raised this dispute.

On the pleadings of the parties the following issues were framed:

Issue No. 1 :

Whether termination of services of Shri Surinder Kumar is illegal and unjust, if so, its effect ?

Issue No. 2 :

Relief ?

I have heard Shri Madhu Sudan Saran Cowshish for workman and Shri Rama Kant. A.D.A. for respondent and have perused the oral and documentary evidence placed on the file. My issuewise findings are as under :

Issue No. 1 :

In support of this issue workman examined himself as MW-1 he deposed on oath that he joined service of respondent on 7th January, 1980 and work upto 16th June, 1985. Thereafter, he was not allowed to resume duty. He issued demand notice to the respondent. Many persons junior to him were recruited by the respondent. Before terminating his services respondent did not issue any notice nor paid any retrenchment compensation.

Management examined Shri Baljit Singh, Clerk MW-1. He deposed that on 17th June, 1985 workman Surinder Kumar absented without any intimation and he never reported for duty. No termination order was passed by the respondent-management regarding services of workman Shri Surinder Kumar.

In view of the above evidence, the scope of dispute between the parties has been narrowed down up to this extent that case of the workman is that he was not allowed to join duty after 17th June, 1985. However, respondent-management has taken plea that, in fact workman absented himself of his own without any intimation to the respondent after 17th June, 1985. He never reported for duty. Workman issued demand notice on 25th June, 1985 and raised the present Industrial dispute. Case of the parties from the above evidence does not appear to be very clear. Since the workman was appointed on daily wages as soon as he started absenting from his duty from 17th June, 1985 under the general law, services of the workman automatically came to an end and the management was not bound to issue any notice etc. to him. But under the Industrial Disputes Act, it was the duty of the management to have issued a notice to the workman regarding his absence and even if the workman would have not reported for duty, in those circumstances his services would have been terminated considering him an absentee and retrenchment compensation should have been paid to him because the workman had rendered service to the respondent management more than 240 days. From the evidence of the workman it is evident that services of the workman were never terminated. He is still on the rolls of the management, so the management is directed to take the workman on duty and also allow him the relief of continuity of service as a daily wager. There is no evidence on the file that workman remained without work from 17th June, 1985 onwards, so he is not allowed back wages, so this issue is decided, accordingly.

Issue No. 2 Relief :

In view of my findings on issue No. 1, I order the reinstatement of the workman with the relief of continuity in service as a daily wager without back wages.

Dated the 19th March, 1987.

V. P. CHAUDHARY,

Presiding Officer,
Labour Court, Ambala.

Endst. No. 605, dated the 19th March, 1987.

Forwarded (four copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

V. P. CHAUDHARY,

Presiding Officer,
Labour Court, Ambala.

No. 9/1/87-6Lab/2939.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala in respect of the dispute between the workman and the Management of Administrator, Municipality, Chhachhrauli, Tehsil Jagadhri.

IN THE COURT OF SHRI V. P. CHAUDHARY, PRESIDING OFFICER, LABOUR COURT,
AMBALA

Reference No. 207 of 1985

SHRIMAN MOHANKUMAR, S/O SHRI OM PARKASH, C/O BALBIR SINGH, 126, LABOUR COLONY, YAMUNA NAGAR AND THE MANAGEMENT OF THE MESSRS ADMINISTRATOR, MUNICIPALITY, CHHACHHRAULI, TEHSIL JAGADHRI.

Present :

Workman with Shri Balbir Singh.

None for the respondent.

AWARD

The Hon'ble Governor of Haryana in exercise of powers conferred,—vide clause (C) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947 referred dispute between Shri Manmohan Kumar, workman and Administrator, Municipality, Chhachhrauli, Tehsil, Jagadhri to this Court. The terms of the reference are asunder

“Whether termination of services of Shri Manmohan Kumar is justified and correct, if not, to what relief is he entitled ?

Workman through his demand notice, dated the 12th May, 1984 alleged that he joined service of respondent-management as a Octroi Moharar on 19th November, 1980 against a regular post on daily wages basis, while his services were terminated on 1st June, 1984 in violation of provisions of section 25(F) of Industrial Disputes Act, 1947. He prayed for his reinstatement with continuity in service and with full back wages.

Respondent-management contested the dispute and contended that workman was employed on temporary basis. He was not at all on regular, the Municipality has not at all violated the mandatory provisions of section 25(F) in fact retrenchment notice was issued to applicant but he flatly refused to accept, in fact he prayed that he be allowed to continue in service when his service has already been terminated. Deputy Commissioner is the head of the respondent who has not been joined as a respondent, so the reference is bad for non-joinder of necessary parties.

On the pleadings of the parties the following issues were framed :—

Issue No. 1 :

Whether termination of the services of workman is illegal and incorrect, if so, its effect ? OPW.

Issue No. 2 :

Both the parties led evidence on merit. The reference was fixed for rebuttal and arguments on 26th March, 1987. None appeared for the respondent, so respondent was proceeded *ex parte*.

I have heard Shri Balbir Singh for applicant and have perused the evidence of both the parties adduced on the file. My issue-wise findings are as under :—

Issue No. 1 :

In support of this issue Shri Manmohan Kumar appeared as AW-1. He stated that he joined service of respondent-management on 19th November, 1980 while his services were terminated on 31st March, 1983. On 1st April, 1983, when he reported on duty he was not given any notice but under the verbal orders he was removed from service, no retrenchment compensation was paid to him.

Respondent examined Shri Mahavir Singh as RW-1 who stated that workman joined service of respondent-management on 19th November, 1980 on daily wages basis. He was employed many times and his services were terminated, accordingly last termination order was passed on 5th April, 1984. In cross-examination he deposed that he did not know whether before dispensing with services of the workman any notice or retrenchment compensation was given to him or not. He however, admitted that junior person to workman are still in service.

In view of the above evidence it is clear that workman joined service of respondent-management on 19th November, 1980 and he was removed from service on 5th April, 1984. During this period many times he was removed from service and again given service. But finally he was removed from service on 5th April, 1984. As per the statement of workman he remained in continuous service of the respondent. It has not been rebutted by the respondent which shows that he worked in the employment of respondent more than 240 days, in those circumstances it was obligatory on the respondent-management to have issued one month notice or would have paid one month pay. In lieu of notice period as well as retrenchment compensation at the time of removing the workman from the job but there is a violation of provisions of section 25(F) of Industrial Disputes Act, 1947 on the part of respondent-management, so the termination order passed by respondent-management is unjust, illegal and cannot be sustained, so workman is entitled to reinstatement with continuity in service as well as with full back wages. So this issue is decided in favour of workman and against the management.

Issue No. 2 :**Relief :**

For the foregoing reasons on the basis of my findings on issue No. 1 I order the reinstatement of the workman with continuity in service and with full back wages. I pass an *ex parte* award regarding the dispute in hand accordingly.

Dated the 26th March, 1987.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

Endst. No. 695, dated the 27th March, 1987.

Forwarded (four copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Dispute Act, 1947.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

The 26th May, 1987

No. 9/2/87-Lab./2908.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s The Hissar District Central Co-operative Bank Limited, Hissar :—

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 38 of 83

between

SHRI OM PARKASH, WORKMAN AND THE MANAGEMENT OF M/S THE HISSAR DISTRICT CENTRAL CO-OPERATIVE BANK LTD., HISSAR

Present :

Shri S.S. Gupta, A.R., for the workman.
Shri B.D. Mehta, A.R., for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute between the workman S/Shri Om Parkash, son of Shri Lilu Ram, Om Parkash, son of Shri Lakhi Ram, Kitab Singh and the management of M/s. The Hissar District Central Co-operative Bank Limited, Hissar to this Court, for adjudication,—*vide* Haryana Government Gazette Notifications Number ID/HSR/19/83/20627—31, dated 3rd May, 1983, 8106—10, dated 4th March, 1985, 14231—36, dated 5th April, 1984:—

Whether the termination of services of S/Shri Om Parkash, son of Shri Lilu Ram, Om Parkash, son of Lakhi Ram and Kitab Singh was justified and in order? If not, to what relief are they entitled?

2. After receipt of the order of reference s, notices were issued to the parties. The parties appeared. These references bearing number 39 of 83, 54 of 84 and 33 of 85 were ordered to be consolidated,—*vide* my order, dated 18th March, 1987. I, further directed that the proceedings shall be recorded in reference number 39 of 83.

3. The common case of all the three petitioners is that they were appointed Managers of the Mini Banks and subsequently their services were terminated without any lawful excuse and in flagrant disregard of the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). As per the demand notices, all the three petitioners were appointed in the year 1976 and their service tenure was ended on 31st March, 1979,—*vide* order, dated 9th April, 1979. All the three petitioners have prayed for reinstatement with continuity of service and full back wages.

4. Separate replies have been filed by the respondent with a common refrain that the claims of the petitioners are time barred, in whose favour, no cause of action accrued and that this Court has no jurisdiction to try the present reference and that the respondent is not an "industry" as defined in section 2(j) of the said Act. On merits, petitioner's appointment,—*vide* order, dated 25th November, 1976 (joined duty on 8th December, 1976) is not denied. It is further alleged that since work and conduct of the petitioners was not satisfactory, so their services were terminated,—*vide* order, dated 9th April, 1979 w.e.f. 31st March, 1979. So, it is asserted that the orders of termination were legal and valid.

5. On the pleadings of the parties, the following issue was framed in reference number 39 of 83 and 54 of 84 on 3rd July, 1984 and 28th May, 1985, respectively.

1. As per terms of reference.

6. In reference number 33 of 85 the following issues were framed on 18th June, 1985:—

1. Whether no cause of action has accrued in favour of the applicant?
2. Whether this Court has no jurisdiction to try the present controversy?
3. Whether the claim is barred by limitations?
4. As per terms of reference.

7. In furtherance of the amended written statement, the following additional issue was laid down for decision on 18th March, 1987:—

1-A. Whether the petitioner remained gainfully employed after his alleged termination? OPR

8. Petitioners in support of their case appeared as WW-1 and the respondent examined MW-1 Shri Surjeet Singh, its Managing Director.

9. Learned Authorised Representatives of the parties heard. My findings on the issues framed are as below:—

Issue number 1 to 3 in Reference number 33 of 85.

10. These issues were not pressed on behalf of the respondent, so, the same are answered against it.

Issue No. 1 in Reference number 39 of 83 and 54 of 84 and issue No. 4 in Reference number 33 of 85.

11. Now, this common issue in all the three references survives for decision. The learned Authorised Representative of the respondent Shri Mehta relying upon the statement of Shri Surjeet Singh, MW-1, Managing Director of the respondent contended that since the petitioners appointment was subject to

regular appointments and they were given extension in dribblets, the petitioners have no right to hold on to the job and their services were rightly terminated on 9th April, 1979 w.e.f. 31st March, 1979. This contention runs counter to the mandatory provisions of section 25F of the said Act. Petitioners termination squarely falls within the ambit of term "retrenchment" as defined in section 2(oo) of the said Act, because all the three petitioners had completed more than 240 days of actual work with the respondent during the last 12 calendar months before the date of termination. The contention of Shri Mehta learned Authorised Representative of the respondent that after regular appointments were made, petitioners termination was inevitable, does not hold the ground because the provisions of section 25F of the said Act are mandatory and non-compliance of the same make the order of termination void *ab initio*. Admittedly no compliance was made. The contention of the respondent that the work and conduct of the petitioners was not satisfactory also cannot hold the ground, because no domestic probe was held into the alleged acts of omissions and commissions of the petitioners. So, petitioners termination is set aside and they are ordered to be reinstated.

12. Now, the question of back wages survives.

13. I shall take up all the cases of three petitioners separately. I shall deal with Om Parkash, son of Shri Lilu Ram petitioner first. The demand notice raised by him is dated 20th December, 1982. That would mean that he raised the demand notice after a lapse of more than three years and eight months. There is no explanation on his behalf for this delay. Ordinarily when order of termination is displaced full back wages are awarded. But the Court can make a departure from the accepted rule under exceptional circumstances, which exist in this case. The respondent bank has been constituted to advance credit on easy terms to the small and marginal farmers. No Court has the right to be bountiful in squandering away its funds. So, a cut in back wages will not be unjustified from the date of termination till the date the petitioner raised the demand notice. So, I award full wages to the petitioner from 21st December, 1982 till the date of reinstatement.

14. The case of Shri Kitab Singh petitioner is on the same footing as that of Shri Om Parkash. So, I award him full back wages from 21st December, 1982 till the date of reinstatement.

15. In the case of Shri Om Parkash, son of Shri Lakhi Ram petitioner in reference number 33 of 85 the facts are different. Though, the date of termination is the same. The demand notice was raised by him on 26th March, 1984. Delay in this case is even longer than other two petitioners. So, for the reasons given in the case of two other petitioners a cut in back wages would not be unjustified. So, I award him full back wages from 27th March, 1984 till the date of reinstatement.

16. However, all the three petitioners will have all benefits of previous service.

17. References are answered and returned accordingly with no order as to cost.

18. A copy of this order be placed upon the file of reference number 54 of 84 and 33 of 83.

The 23rd April, 1987.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

Endst. No. 39-83/910, dated 1st May, 1987

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

No. 9/2/87-6Lab./2909.—In pursuance of the provision of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and management of M/s The Hissar District Central Co-operative Bank Ltd., Hissar.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT,
ROHTAK

Reference No. 162 of 83.

between

SHRI DHAJE SINGH, APPLICANT AND THE MANAGEMENT OF M/S. THE HISSAR
DISTT. CENTRAL CO-OPERATIVE BANK LTD., HISSAR.

Present :

Shri S. S. Gupta, A.R., for the workman.

Shri B. D. Gupta, A.R., for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute between the workman Shri Dhaje Singh and the management of M/s. The Hissar Distt. Central Co-operative Bank Ltd., Hissar to this Court, for adjudication,—*vide* Haryana Government, Gazette Notification No. 1. ID/49574—78, dated 20th September, 1983 :—

“Whether the termination of services of Shri Dhaje Singh, was justified and in order ? If not, to what relief is he entitled ?

2. After receipt of the orders of reference, notices were issued to the parties. The parties appeared. The case of the petitioner is that he was employed with the respondent as a Secretary many years ago but the respondent chose to terminate his services,—*vide* order, dated 17th August, 1982, which order was illegal and unlawful. So, he has prayed for reinstatement with continuity of service and full back wages.

3. In the reply filed by the respondent, preliminary objections taken are that the claim of the petitioner is barred by time and that no cause of action has accrued in favour of the petitioner and that this Court has no jurisdiction to try this present reference and that the petitioner has remained gainfully employed after his termination. On merits, it is alleged that a sum of Rs. 16,687 was embezzled by the petitioner when he was posted as Secretary of the Jandli Co-operative and Service Society, regarding which, a charge-sheet was issued to him along with the list of allegations and a list of witnesses, though no reply was filed by the petitioner and thereafter Enquiry officer was appointed, who found the charges fully proved and thereafter a final show cause notice was given to the petitioner, who did not file any reply and under these circumstances, order of termination was passed, which was legal and lawful.

4. On the pleadings of the parties, the following issue was settled for decision by me on 28th May, 1985:—

1. As per terms of reference.

5. Subsequently in furtherance of the amended reply filed by the respondent, the following additional issue was laid down for decision by me on 18th March, 1987:—

1-A. Whether the petitioner remained gainfully employed after his alleged termination? OPR.

6. In support of his case, the petitioner appeared as WW-1 and the respondent examined MW-1 Shri Surjeet Singh, its Managing Director.

7. Heard.

Additional issue No. 1 :

8. Though a plea was taken by the respondent that the petitioner is engaged in agricultural operation in the village but no evidence has been adduced in that behalf. Though, there is an admission by the petitioner that he is assisting his Father in agricultural operation. From this admission no inference can be withdrawn that the petitioner has remained gainfully employed after his termination.

Issue No. 1:

9. The petitioner seems to have no scruples in making a wrong statement in the Court. In his examination-in-chief he admitted that charge-sheet was issued to him, to which, he filed a reply and an enquiry was also conducted, which of course was not fair and proper and the allegations of misconduct levelled against him were false and frivolous but in cross-examination he gave a complete go-bye to his earlier version when he stated that no enquiry was conducted against him and that he does not know as to whether any witness appeared against him during the enquiry proceedings. On the other hand, MW-1 Shri Surjeet Singh, Managing Director stated that the petitioner committed embezzlement of a sum of more than Rs. 11,000 when he was posted as a Secretary of Jandli Mini Bank regarding which, a charge-sheet Ex. 1 was issued, which was received by him,—*vide* endorsement Ex. M-2 but no reply was filed, though the petitioner applied for extension of time to file a reply but no reply was filed. Under these circumstances, Enquiry Officer was appointed who gave his findings Ex. M-4 and thereafter final show cause notice Ex. M-5 was issued, to which, also no reply was filed by the petitioner. Sophisticated rules of evidence are not applicable in conducting the domestic enquiries which are usually conducted by laymen well versed with procedural law. Here is a petitioner, who has scant regard for truth or honesty. He has not shirked in blowing hot and cold in the same breath. The sworn deposition made by him in the Court has already been detailed which negated the claim of the petitioner that no enquiry was conducted against him. Under these circumstances, enquiry conducted in this case, was fair and proper.

10. Now, the question would be as to whether any interference is called for by this Court under section 11-A of the Industrial Disputes Act, 1947, in the order of punishment awarded to the petitioner. Village Co-operative and Credit Societies seem to have become hot-bed of corruption and nepotism. They are usually manned by personnel who have no respect for rules of the game. Laxity of control in their functioning is a root cause of their mal-functioning. They do not seem to be fulfilling the purpose for which they were constituted. These societies were constituted to make credit available on easy terms to small and needy farmers, to save them from the clutches of the village money lenders, but these Societies have failed in the laudable purpose for which they were constituted. Viewed in this context, reinstating the petitioner would amount to countenancing a situation where Manager of the Society can go scot free after playing with the funds of the Society. So, no interference in the order of termination is called for. The petitioner is not entitled to any relief. The reference is answered and returned accordingly with no order as to cost.

Dated the 15th April, 1987.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak,
Camp Court, Sonapat.

Endst. No. 162-83/904, dated the 1st May, 1987

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer.
Labour Court, Rohtak,
Camp Court, Sonapat.

No. 9/2/87-6 Lab./2910—In pursuance of the provisions of Section 17 of the Industrial disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s. The Hissar District Co-operative Bank Ltd., Hissar :—

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 111 of 82

between

SHRI CHANDER BHAN, APPLICANT AND THE MANAGEMENT OF M/S. THE HISSAR DISTRICT CO-OPERATIVE BANK LTD., HISSAR

Shri S. S. Gupta, A.R., for the workman.
Shri B. D. Mehta, A. R., for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Chander Bhan and the management of M/s. The Hissar District Co-operative Bank Ltd., Hissar, to this Court, for adjudication,—*vide* Haryana Government Gazette Notification No. ID/HSR/38/82/22133, dated 14th May, 1982:—

Whether the termination of services of Shri Chander Bhan was justified and in order ? If not, to what relief is he entitled ?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The claim of the petitioner is that he was appointed as a Manager with the respondent since 8th December, 1976 and all through his work and conduct was satisfactory but the respondent,—*vide* its order, dated 20th July, 1981 unlawfully terminated the services of the petitioner, necessitating the present reference, to this Court,

3. In the reply filed by the the respondent, preliminary objections taken are that the respondent is not an "industry" and that this Court has no jurisdiction to try this present reference and that the petitioner is guilty of mis-appropriation of the funds of the Society and that the petitioner has remained gainfully employed after his termination. On merits, it is alleged that the petitioner embezzled a sum of Rs. 5,306 of Bhani Amirpur Co-operative and Credit Society and so, it is alleged that the order of termination was legal and lawful.

4. On the pleadings of the parties, the following issues were laid down for decision,—*vide* my learned predecessor order dated 15th December, 1982:—

(1) Whether this Court has got no jurisdiction to try this reference ? If so, to what effect ?

(2) As per the terms of reference.

5. Subsequently in furtherance of the amended reply filed by the respondent, the following additional issue was laid down for decision by me on 18th March, 1987:—

(1.A) Whether the petitioner remained gainfully employed after his alleged termination ? OPR .

6. In support of his case, the petitioner appeared as WW-1 and the respondent examined MW-1 Shri Surjeet Singh, its Managing Director.

7. Learned Authorised Representatives of the parties heard. My finding on the issues framed are as below:—

Issue No. 1:

8. In view of the law laid down in the Full Bench authority Civil White Petition No. 878 of 1985 decided on 14th August, 1986, this issue was not pressed on behalf of the respondent.

Additional issue No. 1-A

9. Though, in the amended reply, a plea was taken that the petitioner remained gainfully employed at his village in cultivating his land, there is not a whisper in the statement of Shri Surjeet Singh, Managing Director, who appeared as MW-1. On this fact, though the respondent has placed on record copies of Jamanbandi and Khasra Girdawari. A perusal of the document Ex. M-8 does not go to show that any patch of agriculture land is under self cultivation of the petitioner. Even if, for the sake of arguments it be admitted that the petitioner has remained engaged in cultivation of any parcel of land or has been assisting his Father or relation in agricultural operation, earning so made by him can be ignored as solatium because a workman thrown out from employment is not expected to starve himself and his family to death and not to engage himself in odds and errands to keep the wolf away from the door. So, this issue is answered against the management.

Issue No. 2:

10. The learned Authorised Representative of the respondent Shri Mehta forcefully contended that regarding embezzlement of a sum of more than Rs. 5,000 a charge-sheet Ex. M-1 was issued to the petitioner alongwith the gist of allegations, to which replies Ex. M-2 and M-3 were filed by the petitioner, and in the same the petitioner denied the allegations in a half hearted manner. Enquiry Officer was appointed, whose report is Ex. M-4. Enquiry proceedings copy is Ex. M-J. Thereafter final show-cause notice Ex. M-6 was given but no reply was filed by the petitioner and thereafter with the permission of the Board of Directors termination order Ex. M-7 was passed. On the other hand, learned Authorised Representative of the petitioner Shri Gupta contended that enquiry conducted was not legal and lawful, in which, the petitioner was not given full opportunity of participation and that the Courts have acquitted a defective enquiry with no enquiry at all. In my opinion, the learned Authorised Representative of the equated was not on sound footing in raising these contentions. Enquiry was conducted by an officer not well conversant with the procedural law but a perusal of the report goes to show that the same was conducted in the presence of the petitioner. I have gone through the reply filed by the petitioner to the charge-sheet. Replies are Ex. M-2 and M-3,—*vide* Ex. M-3 he sought further time to file a reply. The petitioner was also afforded full opportunity to inspect the documents, if any, relevant for the purpose of the enquiry. Under these circumstances, it cannot be held that the enquiry conducted in this case was not fair and proper.

11. Now, the question would be as to whether the petitioner deserves the relief of reinstatement or not. Most of the Co-operative Societies are in the red. The same were constituted for the benefit of small and marginal farmers to advance them money at a lower rate of interest. But their functioning has run into untrained hands. Supervisory control of the lead banks of these Societies is very lax. So, functionaries of these Societies are usually tempted to nibble at the fund. The petitioner when he appeared in the Court as WW-1 in examination in chief stated that no charge-sheet was served upon him and as such, there was no question of any domestic enquiry being held but in cross examination he admitted that he was placed under suspension on 18th January, 1980 and that he had filed an application for extension of time to file reply to the charge-sheet. In the next breath he stated that no charge-sheet was served upon him. If, no charge-sheet was served upon him, what was the necessity for the petitioner to file an application for extension of time to file a reply to the charge-sheet. He further admitted that the enquiry was conducted by Shri Surjeet Singh, ADO and that a copy of his findings was made available to him. An appraisal of his testimony will show that the petitioner is a brazen liar, who has spent regard

for truth or honesty. Under these circumstances, relief of reinstatement cannot be granted to the petitioner. So, the claim of the petitioner fails. The reference is answered and returned accordingly with no order as to cost.

Dated 14th April, 1987.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

Endst. No. 111-82/900, dated 1st May, 1987

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

No. 9/2/87-6Lab./2911.—In pursuance of the provision of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s The Sirsa Central Co-operative Bank Ltd., Sirsa.

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 152 of 83

between

SHRI DUNGER SINGH, APPLICANT AND THE MANAGEMENT OF M/S. THE SIRSA CENTRAL CO-OPERATIVE BANK LTD., SIRSA

Shri M.S. Smaugh, A. R. for the workman.
Shri S.S. Goyal, A.R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the applicant Shri Dunger Singh and the management of M/s. The Sirsa Central Co-operative Bank Ltd, Sirsa, to this Court, for adjudication,—*vide* Haryana Government Gazette Notification No. ID/48711-15, dated 16th September, 1983 :—

Whether the termination of service of Shri Dunger Singh, was justified and in order? If not, to what relief is he entitled?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The petitioner was employed as a Secretary,—*vide* letter dated 25th September 1975 and was placed under probation for a period of one year which was extended after expiry of two years and his services were terminated on 20th May, 1978, which was challenged by him in an appeal before the Registrar, Co-operative Societies, Haryana, Chandigarh, which was rejected on 10th October, 1979, after which, the petitioner filed a Civil Suit in the Court of Sub-Judge Dabwali on 19th May, 1981, which he was allowed to withdraw on the ground of jurisdiction. So, he has challenged his termination the illegal and unlawful, since, no prior notice or retrenchment compensation was paid to him.

3. In the detailed reply filed by the respondent, preliminary objections taken are that the petitioner has availed of the remedy of an appeal before the Appellate Authority and Writ Petition before the Hon'ble High Court, is not entitled to raise an industrial dispute under the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) and that the claim is belated. On merits, it is denied that the petitioner was placed on probation for a period of one year only and that the order of termination was passed by the Board of Directors and that the petitioner is guilty of suppressing the fact that he had approached the Hon'ble High Court of Punjab and Haryana through a Writ Petition, which was dismissed and that the Civil Suit was withdrawn by the petitioner after protracted litigation spanning over a period of two years.

4. On the pleadings of the parties, the following issues were settled for decision by me on 27th July, 1984 :—

- (1) Whether the reference is bad in law? OPR.
- (2) Whether the reference is barred by limitation? OPR.
- (3) As per reference.

5. In support of his claim the petitioner appeared as WW-1 and the respondent examined MW-1 Shri Virender Singh Rana, Manager of the respondent/bank.

6. Learned Authorised Representatives of the parties heard. My findings on the issues framed are as below :—

Issue No. 1 :

7. Before the dispute of the petitioner was referred to this Court for adjudication by the appropriate authority Government of Haryana,—*vide* its order dated 16th September, 1983, the petitioner had gone in an appeal against the order of termination before the Registrar Co-operative Societies, Haryana, Chandigarh. His appeal was dismissed on 10th October, 1979. Thereafter he filed a revision petition with the Secretary, Department of Co-operation, which was also dismissed. Having failed there, he filed a Civil Suit in the Court of Sub-Judge, Dabwali on 19th May, 1981, which was withdrawn by him at the fag end of the trial when the same was fixed for arguments on 18th February, 1983. Some where in between he also moved the Hon'ble High Court of Punjab and Haryana, through a Writ Petition, which too was dismissed, though there is no evidence on record to prove this fact but the petitioner has been candid enough to admit this fact. On behalf of the respondent strong reliance has been placed upto a Full Bench authority of the Hon'ble High Court of Punjab and Haryana reported in 1982(1) Vol. 29 SLR 663 Sukhi Ram *V/s* State of Haryana. In this authority their Lordships relied upon AIR 1975 S.C. 2238, *Premier Automobiles Versus K.S. Wadke* laid down the following four principles on the question of jurisdiction. The same are :—

- (1) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act the remedy lies only in the Civil Court.
- (2) If the dispute is an industrial dispute arising out of a right or liability under the general common law and not under the Act, the jurisdiction of the Civil Court is alternative, leaving it to the election of the suitor concerned to choose his remedy for the relief which is competent to be granted in a particular remedy.
- (3) If the industrial dispute relates to the enforcement of a right of an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the Act.
- (4) If the right which is sought to be enforced is a right created under the Act such as Chapter VA then the remedy for its enforcement is either Section 33-C or the raising of an industrial dispute, as the case may be."

8. There is no denying the fact that the petitioner had knocked the Civil Court though at the last moment he withdrew from the battle. He also filed a Writ Petition in the Hon'ble High Court, which as per his own admission was dismissed. Now, the question would be as to whether withdrawal of the Civil Suit by the petitioner at the fag end of the trial would entitle him to raise an industrial dispute with the Labour Department and thereafter get the case referred for adjudication to the Labour Court. The learned Authorised Representative of the petitioner contended that since there was no decision on merits by the Civil Court, the law laid down in the Full Bench authority referred to above will not apply. In support of his contention he cited 1985 II All India Service Law Journal 306 *Ferozepur Central Co-operative Bank Ltd. Versus Presiding Officer, Labour Court, Bhatinda* and another. In this authority his Lordship of the Hon'ble High Court of Punjab and Haryana held that and I quote "I find no plausibility in the submission of the learned Counsel that once the Suits had been filed by these workmen, they had opted their choice of forum for the redress of their grievances and they were debarred from seeking a reference to the Labour Court."

9. Observations quoted above, seem to have been torn out of context because in the authority under reference the Civil Suits were withdrawn by the petitioners at the earliest stage of the trial when they were refused the grant of temporary injunction against their termination. The facts of the case in hand are distinguishable. The petitioner not only filed a Civil Suit, he doggedly pursued the same in the Civil Court for two long years and withdrew the same at the stage of arguments and prior to that he had been to the Registrar, Co-operative Societies, Haryana, Chandigarh and also filed a revision against rejection of his appeal before the Secretary, Co-operation, Government of Haryana. Having failed there, he filed a Writ Petition in the Hon'ble High Court of Punjab and Haryana, which was also dismissed and thereafter he filed a Civil Suit. In my opinion the petitioner elected forum of his choice and that was the Civil Court and now, he cannot be allowed to agitate the same controversy through a reference before the Labour Court. So, the reference in the present case, is bad in law and as such, this issue is answered against the petitioner.

Issue No. 2:

10. No limitation is prescribed for raising an industrial dispute and the powers of the Central Government or State Government as the case may be are not hemstrung by the law of limitation in referring the dispute to the Labour Court for adjudication, though delay in raising the same can be considered by the Court at the time of awarding relief of reinstatement or back wages.

11. Since issue No. 1 has gone against the petitioner, he must fail before this Court also. The reference is answered and returned accordingly with no order as to cost.

Dated the 14th April, 1987.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak.

Endorsement No. 152-83/901, dated the 1st May, 1987

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments Chandigarh as required under section 15 of the Industrial Dispute Act, 1947.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak.

No. 9/2/87-6Lab./2912.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the Workman and the management of M/s Mohta Electro Steel Ltd., Bhiwani.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK.

Reference No. 43 of 85

between

SHRI FATEH SINGH, WORKMAN AND THE MANAGEMENT OF M/s. MOHTA ELECTRO
STEEL LTD., BHIWANI.

Shri Raghbir Singh, A.R. for the workman.

Shri M.M. Kaushal, A.R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute between the workman Shri Fateh Singh and the management of M/s. Mohta Electro Steel Ltd., Bhiwani, to this Court, for adjudication,—vide Haryana Government Gazette Notification No. 11542—47 dated 21st March, 1985 :—

Whether the termination of services of Shri Fateh Singh is justified and in order? If not, to what relief is he entitled?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the petitioner is that he was employed with the respondent for the last about six years and all through his work and conduct was blemishless but the respondent stopped him from performing his duties w.e.f. 1st August, 1984 and in this way terminated his services. So, he has prayed for reinstatement with continuity of service and full back wages.

3. In the detailed reply filed by the respondent, it is alleged that the petitioner was employed as a Watchman since 28th August, 1978 and was working in the Watch and Ward department of the respondent and during the tenure of his service the petitioner was negligent in the performance of his duties, regarding which, he was issued warnings umpteen times without any effect and that in the year 1984, w.e.f. 1st August, 1984 the petitioner started absenting from his duties, regarding which letters dated 3rd August, 1984, 6th August, 1984, 18th August, 1984 were issued to him, enjoining upon him to join his duties but the petitioner did not. But the management received letters from the workman on 11th August, 1984 alleging wrong facts, which was replied to by the management on 18th August, 1984. The management also submitted reply to the demand notice raised by the petitioner and during conciliation proceedings before the Labour-cum-Conciliation Officer, the management offered to take back the petitioner on duty, but the petitioner never agreed to and as such, the management was constrained to treat on 7th November, 1984 that the petitioner has abandoned his employment and this decision of the management was conveyed to the Labour-cum-Conciliation Officer and was taken under the Certified Standing Orders applicable upon the respondent company. So, it is alleged that there was no question of the management terminating the services of the petitioner on 1st August, 1984 as alleged. Other objections taken are that since the petitioner abandoned his employment and the present reference is confined to the justifiability or otherwise of the alleged order of termination, present reference is bad in law, which is pre-mature and that since the

petitioner was holding a position of confidence as a Watchman and that he had no scruples to betray the confidence reposed in him, the management was justified in losing confidence in the workman.

4. On the pleadings of the parties, the following issues were settled for decision by me on 23rd August, 1985:—

1. Whether the reference is bad-in-law ? OPR.
2. Whether the demand notice is pre-mature? OPR.
3. Whether the workman remained gainfully employed after his alleged termination? OPR.
4. As per terms of reference.

5. In support of his case, the petitioner appeared as WW-1 and examined WW-2 Shri Ved Pal Singh. The management examined MW-1 Shri Attar Singh, Steno-typist office of the Labour-cum-Conciliation Officer, Bhiwani, MW-2 Shri J.C. Vij its Factory Manager, M-W3 Shri Mahant Singh, Security Incharge, MW-4 Shri J.P. Srivastave, Assistant, office of the Labour Commissioner, Haryana, Chandigarh.

6. Learned Authorised Representatives of the parties heard. My findings on the issues framed as below:—

Issue No. 1

7. There are two limbs of this issue. This issue was pressed by Shri Kaushal firstly on the ground that the present reference is bad in law as the controversy now, before the Court substantially spills beyond the terms of reference, which are confined to the justifiability of or otherwise of the alleged order of termination. There is no denying the fact that the terms of reference pertain to the justifiability or otherwise of the alleged order of termination. There is no gain saying the fact that now, the controversy before the Court is as to whether the petitioner abandoned his employment of his own by remaining absent from his duties after 1st August, 1984 or not. This Court would have been justified in throwing out this reference on the ground that the real controversy between the parties does not fall within the ambit of term of reference but I shall desist from doing so, because the parties have already gone through the gamut of adducing evidence on merits. In the Division Bench authority of the Hon'ble High Court of Bombay reported in 1984 II LLN 297 *versus* sita Ram Vishnu Shirodiker and Administrator Government of Goa and others. It was held that in case, the management takes a plea of abandonment before the Court and the terms of reference are confined to the justifiability or otherwise of the order of termination, the Labour Court or Tribunal cannot travel beyond the terms of reference and the reference has to be held to be bad-in-law.

8. The petitioner when he appeared in the Court as WW-1 is guilty of evasive denial and half truths. He has admitted his signatures on the acknowledgement due but denied the receipt of the letter received thereunder. He further stated that the letters/notices Ex M-8 to Ex. M-11 were never received by him from the management but his Authorised Representative Shri Ved Pal Singh, who was examined as WW-2 and who appeared before the Labour-cum-Conciliation Officer, Bhiwani, during the conciliation proceedings admitted that the workman had received letters Ex. M-10 and M-11. Through these letters, the management impressed upon the petitioner to resume his duties at the earliest, because he had started absents from his duties w.e.f. 1st August, 1984. The management has placed strong reliance upon the conciliation proceedings, which, took place before the Labour-cum-Conciliation Officer, Bhiwani. For the Perusal of the Court, file in original has been placed on record. A scrutiny of the same will go to show that the petitioner was playing hide and seek before the said officer. The management made officer's many times to take back the petitioner on duty but the said offer was not accepted by the petitioner. Feeling frustrated his efforts of conciliation a failure report was sent by the Labour-cum-Conciliation Officer, Bhiwani to the Deputy Labour Commissioner Sonapat. His report sent to the Labour Commissioner, Haryana, Chandigarh has also been placed upon the file. He has reported that he himself has verified the facts of the case and has come to the conclusion that the petitioner himself started absents from his duties w.e.f. 1st August, 1984 and in this way abandoned his employment. Copy of his report is Ex. M-W-3/2. The same is dated 11th February, 1985. So, that would mean that all efforts to persuade the petitioner to resume his duties proved abortive. The only inference possible is that the petitioner never wanted to join his duties after 1st August, 1984 and his only interest seemed to be keep the controversy alive and to get paid wages later on for no work done. Such an attitude of the petitioner is subversive of industrial discipline. Copies of the notices sent to the petitioner to resume his duties are Ex. M-8, M-9, M-10 and M-11. The same are dated 3rd August, 1984, 6th August, 1984 and 18th August, 1984 respectively. A perusal of the same goes to show that allthrough the management has been keen to allow the petitioner to resume his duties, which he never did. Such a stand was taken by the management in its reply to the demand notices raised by the petitioner with the Labour-cum-Conciliation Officer, Bhiwani. Copy of the reply is Ex. MW-1/1. All these facts become amply clear from the statement of Shri J. C. Vij, Factory Manager of the respondent, who was examined as MW-2. MW-3 Shri Mahant Singh, Security Incharge of the respondent stated that the entry of the petitioner

was never barred to the factory premises in the year 1984. So, my foregoing discussion boils down to this that the petitioner of his own abandoned his employment w.e.f 1st August, 1984 and under the Certified Standing Orders applicable upon the respondent company is deemed to have abandoned his employment by remaining absent for more than 10 consecutive days. So, this issue is answered in favour of the management.

Issue No. 2

9. Since the petitioner of his own abandoned his employment, he was not justified in raising any demand notice regarding reinstatement against the respondent.

Issue No. 3

10. On this issue, there is no evidence on behalf of the respondent, so, the same is answered against it.

Issue No. 4

11. In the light of my decision on issue No. 1, no further discussion on this issue is required but still the learned Authorised Representative of the respondent contended that the petitioner during the course of employment has been guilty of various acts of the omissions and commissions and so, his reinstatement in any case would not be justified. The petitioner admitted his signatures upon Ex. M-13 to M-17 various memoes issued to the petitioner regarding his negligence in the performance of his duties. The petitioner was holding a position of trust. Any negligence on his part in the performance of his duties can lead to huge loss to the respondent. But the petitioner never seen to have taken the path of reason. He persisted in his countumacious behaviour. Under these circumstances, he deserves no relief. The reference is answered and returned accordingly no order as to cost.

Dated, the 29th April 1987.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak.

Endst. No. 43-85/913 dated the 1st June 1987.

Forwarded (four copies) to the Secretary to Government Haryana, Labour & Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak.

No. 9/2/87/6-Lab/2913.—In pursuance of the provision of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s Managing Director. The Sonapat Central Co-operative Bank Ltd., Sonapat.

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 71 of 1986

between

SHRI RANBIR SINGH, WORKMAN AND THE MANAGEMENT OF M/s MANAGING DIRECTOR,
THE SONEPAT CENTRAL CO-OPERATIVE BANK LTD., SONEPAT

Present :

Shri S.N. Solanki, A.R. for the workman.

Shri R. P. Tomar, A.R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following disputes, between the workman

Shri Ranbir Singh and the Management of M/s Managing Director, The Sonepat Central Co-operative Bank Ltd., Sonepat, to this Court, for adjudication,—*vide* Haryana Government Gazette Notification No. 21506-11, dated 25th June, 1986 :—

Whether the termination of services of Shri Ranbir Singh is justified and in order ? If not, to what relief is he entitled ?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the petitioner is that he was employed with the respondent as a Secretary,—*vide* order, dated 2nd December, 1975 and he assumed his duties on 8th December, 1975 and during the course of employment he served as such with several Co-operative Societies at different places and all through his work and conduct was satisfactory but the respondent choose to terminate his services unlawfully,—*vide* order dated 21st March, 1978, which was passed in gross violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

2. In the reply filed by the respondent, preliminary objections taken are that the petitioner has no *locus standi* to raise the present dispute, because his services tenure was terminated as per terms and conditions of the appointment letter and that the appeal filed by the petitioner against the order of termination before the Registrar, Co-operative Societies, Haryana, Chandigarh was dismissed on 28th May, 1979 and that the Government of Haryana, rejected the demand notice of the petitioner twice before making the reference to this Court for adjudication and that the claim is barred by limitation. On merits, it is alleged that the work and conduct of the petitioner was never satisfactory and he further embezzled a sum of Rs. 390 while he was posted at Ferozepur Bangar Co-operative Society and further he was guilty of absenteeism and contumacious behaviour. It is further alleged that since the petitioner showed no improvement in his work and conduct, his services were rightly terminated and resolution in that behalf was passed by the Board of Directors.

3. On the pleadings of the parties, the following issue was framed by me on 29th September, 1986 :—

(1) As per terms of reference.

4. In support of his case, the petitioner himself appeared as WW-1 and the respondent examined Shri Duli Chand, its Managing Director as MW-1.

5. Learned Authorised Representatives of the parties heard. My findings on the issue framed are as below :—

Issue No. 1

6. The learned Authorised Representative of the petitioner contended that since no domestic enquiry was held into the alleged acts of mis-conduct, omissions and commissions committed by the petitioner, the order of termination was not legal and lawful and that the respondent has no right to award the extreme penalty of dismissal without holding a proper probe into the allegations of mis-conduct against the petitioner. Since the petitioner's termination was made after he had completed more than 240 days of actual work with the respondent during the last 12 calendar months from the date of termination, his termination was violative of the provisions of Section 25F of the said Act, because no retrenchment compensation was paid to the petitioner.

7. On the other hand, the learned Authorised Representative of the respondent contended that the respondent was within its right to terminate the services of the petitioner within the extended period of probation and that as per the terms and conditions of the appointment letter, his services could be terminated at any time without assigning any reason and since the petitioner was guilty of committing various acts of omissions and commissions, such as un-authorised absenteeism, embezzlement of the funds of the Society, rude behaviour with the Creditors of the Society, his termination was legal and lawful. In that behalf, he has drawn my attention to the various complaints received against the petitioner, mention of which has been made in the resolution of the Board of Directors of the respondent/bank passed on 20th March, 1978. Be that it may be so petitioner's service could not have been terminated without holding a domestic probe into the alleged allegations of misconduct against the petitioner, because it is against the principles of natural justice to punish a person without giving him an opportunity of being heard. Since no domestic enquiry was held, so, order of termination was illegal and unlawful as the same was violative of the mandatory provisions of Section 25F of the said Act and as such, the same cannot be sustained, and as such, the same is set aside and the petitioner is ordered to be reinstated.

8. On the question of back wages, the petitioner cannot succeed. The termination order against him was passed on 20th March, 1978 and he raised the demand notice on 5th March, 1985 after a lapse of more than seven years. There is no dispute that no limitation is prescribed under the Industrial Disputes Act, 1947 for raising a demand notice and no fetters have been placed upon the powers of the

appropriate Government to refer the dispute to the Labour Court for adjudication. The question of delay only creeps in while deciding the question of back wages. There is no explanation on behalf of the petitioner as to why he could not raise the demand notice at the earliest after his termination. It may be possible that the petitioner might have gone to the Registrar, Co-operative Societies, Haryana, Chandigarh in an appeal against the order of termination, but the same too was decided on 28th May, 1979. There is no explanation as to why he could not raise the demand notice immediately thereafter. Though, no domestic probe has been held into the allegations of misconduct against the petitioner but the same cannot be held to be absolutely un-founded. So, taken into consideration, the totality of the circumstances and the fact that the respondent/bank is public institution, I award back wages to the extent of only 40% from 6th March, 1985 onwards till the date of reinstatement. The petitioner will not have also any benefit of service for the period 22nd March, 1987 to 5th March, 1985. The reference is answered and returned accordingly with no order as to cost.

Dated, The 17th April, 1987.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak,
Camp Court, Hissar.

Endorsement No. 71-86/908, dated 1st May, 1987.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak.

No. 9/2/87-6 Lab./2916.—In pursuance of the provision of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s. Managing Director, Haryana Ware housing Corporation, Chandigarh.

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 23 of 1986

between

SHRI HARI CHAND, WORKMAN AND THE MANAGEMENT OF M/S. MANAGING
DIRECTOR, HARYANA WARE HOUSING CORPORATION, CHANDIGARH

Present.—

Shri S.S. Gupta, A.R. for the workman.

Shri Balwan Singh, A.R. for the management ?

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Hari Chand and the management of M/s. Managing Director, Haryana Ware Housing Corporation, Chandigarh, to this Court, for adjudication, —vide Haryana Government Gazette Notification No. 4471-76, dated 29th January, 1986 :—

Whether the termination of services of Shri Hari Chand is justified and in order ? If not, to what relief is he entitled ?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the petitioner is that he was employed with the respondent as a Godown Attendant-cum-Watchman,—vide order dated 5th May, 1982 and that served in this capacity at various stations and that Manager of the Haryana Ware Housing Corporation, Rohtak, filed a complaint against the petitioner regarding theft, which was gone into by Rohtak Police and a concellation report was sent by the police on 4th September, 1984 and so, the petitioner who had been placed under suspension was reinstated with effect

from 3rd May, 1985 but all of a sudden on 25th May, 1985 his services were terminated, which order is illegal and unlawful. So, he has prayed for reinstatement with continuity of service and full back wages.

3. In the reply filed by the respondent, claim of the workman has been controverted in toto, though it is admitted that the petitioner was appointed on the date alleged and his services were dismissed on the ground of unsatisfactory service record. Preliminary objections taken are that since the petitioner was a probationer, his services could be terminated at any time during the period of probation under sub-clause 2 of the Haryana Ware Housing State Regulation. It is further alleged that the service record of the petitioner was below average, so also, his service tenure could be also curtailed summarily. Another objection taken is that the petitioner is not a "workman" as defined in section 2(s) of the Industrial Disputes Act, 1947, (hereinafter referred to as the Act).

4. On the pleadings of the parties, the following issues were settled for decision by me on 25th April, 1986 :—

- (1) Whether the petitioner is not a "workman" as defined in section 2(s) of the I.D. Act, 1947 ?
- (2) As per terms of reference.

5. In support of his claim, the petitioner appeared as WW-1 and the respondent examined MW-1 Shri G.S. Siwach, District Manager and MW-2 Shri Bhup Singh.

6. The learned Authorised Representatives of the parties heard. My findings on the issues framed are as below :—

Issue No. 1

7. This issue was not rightly pressed on behalf of the respondent, because the petitioner is a "workman" as defined in section 2(s) of the said Act, because his duties were of a nature as detailed in the said section. His case does not fall by any stretch of imagination under the exceptions provided in that Section.

Issue No. 2

8. On behalf of the respondent, it was vehemently contended that the respondent corporation was within its right to dispense with the services of the petitioner under the Haryana Ware Housing Corporation State Regulation number 7(2)(a) because of his unsatisfactory service record. In that behalf, he has drawn my attention to the various complaints of absenteeism and alcoholism received against the petitioner. The same are Exhibit MW-1/1 and MW-2/5. MW-1/2 is the reply filed by the petitioner to the complaint Exhibit MW-1/1. In this reply the petitioner admitted his guilt being found drunk while on duty and begged for mercy. There is no gain saying the fact that under the Regulation mentioned above, the respondent/Corporation could dispense with the services of the petitioner at any time during the period of probation on the ground of unsatisfactory service record but the question would be as to whether the said Regulations can have any over riding effect upon the mandatory provisions of Section 2(o) and Section 25-F of the said Act. This controversy stands clinched from the law laid down by their Lordships of the Supreme Court of India in 1984 (48) Indian Factories and Labour Reports 89, the Management of Karnataka State Road Transport Corporation Bangalore and M. Boraish and another. The facts of the case under reference were on all fours to the facts of the case in hand. In the case under reference also, termination of service was brought about of the aggrieved employee during the period of probation on the ground of unsatisfactory performance. Their Lordships held that the said order will amount to "retrenchment" and was void *abinitio* on account of non-compliance with the mandatory provisions of Section 25-F of the said Act. So, their Lordships agreeing with the award rendered by the Labour Court and the dismissal of the Writ Petition filed by the management, dismiss the appeal filed by the management. So, there is no escape from the conclusion that the order of termination Exhibit M-3 was illegal and unlawful and as such, the same is set aside.

9. Now, the question of relief survives. The petitioner was found dead drunk while on duty. He admitted his guilt,—*vide* his explanation Exhibit MW-2/2 dated 8th April, 1984 in reply to the memo Exhibit MW-2/1. His A.C.R. for the year, 1984-85 is below average. So his ACR for the year, 1983-84. Copies of the same are Exhibit MW-2/3 and MW-2/4. Another memo issued to him is Exhibit MW-2/5 regarding his absence from duty without leave. So, service record of the petitioner is not very flattering. He was holding sensitive post of Godown Attendant-cum-Watchman. His negligence in the performance of his duties can lead to huge losses to the respondent/Corporation. For that he cannot escape some cut in back wages. The normal rule in case the order of termination is displaced is to award full back wages but the Court can make a departure from the accepted rule under certain compelling circumstances. There is no straight jacket formula in awarding back wages. Every case has to be decided on the basis

of its peculiar facts. So, the petitioner is ordered to be reinstated with continuity of service but back wages to the extent of only 40% from the date of termination till the date of reinstatement. The reference is answered and returned accordingly with no order as to cost.

Dated the 22nd April, 1987.

B.P. JINDAL,

Presiding Officer,
Labour Court, Rohtak.

Endorsement No. 23-86/915, dated 1st May, 1987

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B.P. JINDAL,

Presiding Officer,
Labour Court, Rohtak.

No. 9/2/87'6Lab./2917.—In pursuance of the provision of Section 17 of the Industrial disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of presiding Officer, Labour Court, Rohtak in respect of the dispute between the Workman and the management of M/S Mahesh Wood Products(P) Ltd., Khewra Road, Bahalgarh. (Sonepat).

BEFORE SHRI B. P. JINDAL PRESIDING OFFICER, LABOUR COURT, ROHTAK.

Reference No. 177 of 84.

between

SHRI PHOOL CHAND, WORKMAN AND THE MANAGEMENT OF M/S. MAHESH WOOD PRODUCTS (P) LTD., KHEWRA ROAD, BAHALGARH (SONEPAT).

Shri S.N. Solanki, A.R. for the workman.
Shri S. Kaushal, A.R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute between the workmen S/Shri Phool Chand, Ram Pher, Ram Chander, Munna Lal, Prahalad Singh and Hirdya Ram and the Management of M/s. Mahesh Wood Products (P) Ltd., Khewra Road, Bahalgarh (Sonepat), to this Court, for adjudication,—vide Haryana Government Gazette Notification Numbers 33792—97, 33799—804, 33806—11, 33827—32, 33234—39, 33862—67, dated 4th September, 1984 :—

Whether the termination of services of S/Shri Phool Chand, Ram Pher, Ram Chander, Munna Lal, Prahalad Singh and Hirdya Ram was justified and in order? If not, to what relief are they entitled?

2. After receipt of the order of references, notices were issue to the parties. The parties appeared. These references bearing number 177, 178, 179, 182, 183 and 187 all of the year 1984 were ordered to be consolidated—vide my order dated 6th May, 1985. I, further directed that proceedings shall be recorded in reference number 177 of 84. There are six petitioners in this case namely S/Shri Phool Chand, Ram Pher, Ram Chander, Munna Lal, Prahalad Singh and Hirdya Ram. All of them were employed as Helpers with the respondent. As per the Claim Statement filed in the Court, their services were terminated on 13th May, 1984, 19th May, 1984, 15th May, 1984, 12th May, 1984, 12th May, 1984 and 12th May, 1984 respectively. On the date of termination they have put in three years, six years, three and half years, one and half years, six years and three and half years respectively. S/Shri Phool Chand, Munna Lal, Ram Chander and Hirdya Ram alleged that their salary was Rs. 382 p.m. Shri Prahalad Singh claimed that his services were Rs. 416 p.m. whereas Shri Ram Pher put the figure at Rs. 400 p. m. Their common claim is that their services were terminated in flagrant disregard of the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) and all of them have claim reinstatement with continuity of service and full back wages.

3. Separate replies have been filed by the respondent. The refrain of all the same is that the petitioners of their own started absenting from their duties between 11th May, 1984 to 16th May, 1984 and that inspite of notices sent to them, they did not resume their duties and as such petitioners, are deemed to have abandoned their employment. Other objections taken are that the references are bad in law and that the question of retrenchment of the petitioners can only be gone into by the Industrial Tribunal and not by the Labour Court.

4. On the pleadings of the parties, the following issues were settled for decision by me on 4th March 1985:—

1. Whether the reference is bad in law? OPR.

2. As per terms of reference. OPA.

5. In support of their claim all the four petitioners except Shri Ram Chander and Hirdya Ram appeared as WW-1 to WW-4. The respondent examined MW-1 Shri Sanjeev Kumar, its Manager.

6. The learned Authorised Representatives of the parties head. My findings on the issues framed are as below :—

Issues No. 1 and 2

7. Since these issues are inter connected, they cannot be decided in isolation.

8. The learned Authorised Representative of the respondent Shri Kaushal contended that these references are bad in law, because the controversy in hand substantially spills beyond the terms of reference, which, are confined to the justifiability or otherwise of the order of termination and that since no order of termination was passed by the respondent. This he contended on the basis of law laid down in 1984 JILIN 297 Sita Ram Vishnu Shirodhkar and Administrator Government of Goa and others.

9. I would have gone along with the learned authorised Representative of the respondent but for the fact that from the evidence on record, the plea of the respondent stands substantiated. I have already given the dates from which the petitioners started absenting from their duties. Under the Model Standing Orders, which have got the force of law as held in 1983 Lab. I.C. page 223 M/s. Escorts Ltd., Faridabad versus Industrial Tribunal, Haryana, Faridabad, a worker is deemed to have lost lien on his job in case he remains absent from his duties for eight consecutive days. Such a plea was taken by the respondent even before the Labour-cum-Conciliation Officer when the proceedings were pending before him for conciliation after demand notices had been raised by the petitioners. Besides that, the respondent has placed on record the notices issued to the petitioners enjoining upon them to resume their duties at the earliest. Out of the six petitioners three of them S/Shri Phool Chand, Ram Pher and Ram Chander had proceeded on leave and thereafter they did not resume their duties. Various notices sent by the respondent were not responded to by the petitioners. Copies of the same are Ex. M-2 to M-10, M-X to M-X/3. Photostat copies of registered A.D. and UP Care Ex. R-1, R-2, R-3, R-4 and R-5. On the other hand, the learned Authorised Representative of the petitioners Shri Solanki forcefully argued that there was no question of the petitioners abandoning their employment and that this ploy of notices was adopted by the respondent to ease out the petitioners from their job. This contention raised on behalf of the petitioners is not substantiated from the evidence on record. Had the petitioners been keen to resume their duties, they could have done so in pursuance of the notices given to them. Reasons for their absence without leave are best known to the petitioners. Shri Munna Lal one of the petitioners when he appeared as WW-4 admitted that he received one letter from the management. He denied that the letter X to X/3 were ever received by him. Similarly Shri Prahalad Singh, petitioner admitted that he had received a notice from the management, to which, he sent a reply but the copy of the same is not with him. Under these circumstances, there is no escape from the conclusion that the petitioners left their employment of their own and that the management never terminated their services as alleged. But for the documentary evidence placed on record, I would have held that these references are bad in law. The petitioners are not entitled to any relief. The references are answered and returned accordingly with no order as to cost. A copy of this order be placed upon the file of reference number 178, 179, 182, 183 and 187 all of the year 1984.

Dated the 22nd April, 1987.

B.P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

Endst. No. 177-84/911

Dated : 1-5-1987

Forwarded (four copies) to the Secretary to Government of Haryana, Labour & Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B.P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.